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COMMENTS:

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Conrad J. Clark

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DEC 03 2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Verkaart et al.

Appeal No.:

Serial No.: 09/623,793

Art Unit: 1743

Filed: September 8, 2000

Examiner: S. Siefke

For: APPARATUS FOR THE STERILE TRANSFER OF FLUIDS

REPLY BRIEF ON APPEAL

The withdrawal of the rejection of claims 4 and 8 through 10 is noted with appreciation.

It is submitted that the description of the Esposito reference contained in the Examiner's Answer is incorrect. In particular, the examiner repeats the assertion that the "second part (30) creates a bellow (sic) when the user applies pressure to the plunger to draw fluid into the syringe." The error in this was pointed out at page 12 of the Appeal Brief in connection with claim 4, and Appellants again submit that it is simply incorrect. There is no disclosure in Esposito that the user "applies pressure to the plunger to draw fluid into the syringe."

Similarly, there is absolutely no disclosure in Esposito that the enclosure is made of "flexible material," as asserted by the examiner. As explained in the Appeal Brief at page 11, "thermoplastic" carries no implication of flexibility. Thus, it is submitted that the argument in the second paragraph on page 6 of the Examiner's Answer is groundless.

In the first full paragraph on page 5, the examiner presents a response to an argument not made in the Appeal Brief. Nevertheless, Appellants do maintain that Esposito does not show a two-part enclosure where the first part receives the barrel and the second part receives the plunger, particularly with regard to the examiner's assertion that the "first part" in Esposito is the fitting 50. This position requires the examiner to assert in the first paragraph on page 6 that the

"first part 50 is readily detachable from 38a and 38b because when the sheath is opened the first part 50 is still attached to the syringe." The predicate for this appears to be that "the sealing line 40 breaks so that the first and second sheets 38a and 38b can depart from each other there along." These statements are not only unsupported in the Esposito disclosure but, further, make little sense. Appellants assert that nowhere does Esposito disclose that the first part is readily detached from the second part.

Regarding claims 5, 6, and 19, the examiner asserts that the operator in the sterile field grasps the sterile syringe while it is still in the enclosure and through the enclosure 10. This is clearly incorrect. First, the description at column 5, at lines 53-56 referenced by the examiner occurs after the package has been opened. See, column 5 at lines 49-50. Thus, the operator in the non-sterile field holds the syringe through the package, while the operator in the sterile field grasps the syringe directly. If the operator in the sterile field grasped the package as asserted by the examiner, he would compromise the sterility, which Esposito clearly states does not occur.

With regard to claim 18, it is submitted that the gripping elements cannot be on the plunger because the claimed gripping elements are on the casing whereas the plunger is on the syringe.

For the above reasons and those presented in the Appeal Brief, it is submitted that the rejections are in error.

Respectfully submitted,
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